IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8327 of 1988

For Approval and Signature:

HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CO-OPERATIVE BANK OF AHMEDABADLTD - Petitioner(s)
Versus
SUSHILABEN WD/O RAOJIBHAI PATEL & 1 - Respondent(s)

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Appearance :
MR MB GANDHI for Petitioner
Respondent No.1/1 - Absent
Respondents : 1/2, 1/3 and 2 - Deleted

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CORAM : HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 18/07/2006

ORAL JUDGMENT

1. Learned advocate for the petitioner seeks leave to delete respondents No.1/2 and 1/3. Leave is granted. Amendment to be carried out forthwith.

2. By this petition under Article 227 of the Constitution of India, the petitioner, Cooperative Bank of Ahmedabad Ltd., challenges the order dated 27th October, 1988 passed by the Gujarat State Cooperative Tribunal, Ahmedabad in Appeal No.51 of 1988 whereby the Tribunal has allowed the appeal preferred by the respondent, against the judgement and award dated 4th March, 1983 passed by the Board of Nominees, Ahmedabad in Arbitration Suit No.1750 of 1979.

3. One M/s Jyoti Engineering Works, through its Proprietor Shri Govardhandas Shyamsunder, had availed of a loan of Rs.50,000/- from the petitioner bank for which the deceased respondent No.1 – Shri Raojibhai Somabhai Patel has stood as a surety. As the amount was not repaid within the stipulated time limit, the petitioner bank filed an application for recovery of Rs.58,751=81 against the principal debtor and the deceased respondent by way of Arbitration Suit No.1750 of 1979 before the Board of Nominees, Ahmedabad.

4. By a judgement and award dated 4th March, 1983 passed in the aforesaid Arbitration Suit, the Board of Nominees directed the opponents to pay the petitioner Bank an amount of Rs.58,751=81 as well as interest at the rate of 16% on the principal amount of Rs.50,000/- from the date of

the suit i.e. from 7th August, 1979 till recovery thereof. The Board of Nominees also granted the facility of payment by way of installments to the opponents.

5. Being aggrieved by the aforesaid order passed by the Board of Nominees, Ahmedabad, the deceased respondent preferred an Appeal before the Gujarat State Cooperative Tribunal, Ahmedabad being Appeal No.51 of 1988. By an order dated 27th October, 1988, the Appeal was allowed. The Tribunal held that the respondent herein is not liable to pay the sum awarded by the Board of Nominees and directed that the award be amended accordingly. It was declared that the award would remain in force only qua the principal debtor, and that, the respondent shall be discharged and shall not be liable in any manner under the award. It is this order of the Tribunal which has given rise to the present petition.

6. Heard Mr.Chinmay Gandhi, learned advocate on behalf of the petitioner.

7. The sole remaining respondent i.e. respondent No.1/1 – Sushilaben widow of Raojibhai Patel has refused to accept the notice of Rule and has not entered appearance.

8. The learned advocate for the petitioner

submitted that the Tribunal had erred in overlooking the provisions of Section 128 of the Indian Contract Act, 1872, which provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. It was submitted that, upon perusal of the order of the Board of Nominees, it is apparent that the deceased respondent has stood as a surety in respect of the loan availed of by M/s Jyoti Engineering Works. That, the deceased respondent was liable to discharge the debt in case the principal debtor failed to pay the amount. It was submitted that, in the circumstances, the Board of Nominees had rightly imposed the liability on the principal debtor as well as the surety. It was submitted that, in the circumstances, the petition is required to be allowed and the impugned order passed by the Tribunal is required to be quashed and set aside.

9. As can be seen from the order of the Tribunal, the Tribunal has recorded that, during the course of the proceeding before the Board of Nominees, the petitioner bank and the principal debtor had submitted a consent pursis wherein the principal debtor had admitted the liability and agreed to pay the same by way of installments. It was noted that the deceased respondent was not a signatory to the said

consent pursis. The Tribunal has accepted the contention raised on behalf of the deceased respondent that the consent pursis amounted to a new contract, and that, the deceased respondent was not a party to the same; hence, the deceased respondent could not be made liable in respect of the same.

10. Upon appreciation of the facts and the evidence on record, the Tribunal has come to the conclusion that the consent pursis amounted to a new contract, which was made behind the back of the deceased respondent and hence, he could not be held liable in respect of the same. The Tribunal has, accordingly, accepting the contention raised on behalf of the deceased respondent, allowed the Appeal.

11. Section 133 of the Indian Contract Act provides for “Discharge of surety on variation of contract”. Under the provisions of the said section, any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance. In the facts of the present case, it is an admitted position that before the Board of Nominees the principal debtor had accepted the debt and requested for making payment by way of installments, which amounts to a variation in the terms of the contract, without the consent

of the respondent-surety. In the aforesaid premises, there cannot be said to be any infirmity in the order of the Tribunal so as to warrant any interference at the hands of this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

12. For the reasons stated above, the petition fails and is, accordingly, rejected. Rule is discharged. There shall be no order as to costs.

[HARSHA DEVANI, J.]

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